

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA
and the MICHIGAN DEPARTMENT
OF ENVIRONMENT, GREAT LAKES,
AND ENERGY

Plaintiffs,

V.

R.J. TORCHING, INC., aka RJ Industrial
LLC or RJ Industrial,

Defendant.

Civil Action No. 23-cv-_____

EXHIBIT C TO COMPLAINT:

EPA 2017 NOTICE OF VIOLATION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 20 2017

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jason Roughton, President
RJ Torching, Inc.
d/b/a RJ Industrial, LLC
G-5167 North Dort Highway
Flint, Michigan 48505

Re: Notice and Finding of Violation
RJ Torching, Inc.
Flint and Battle Creek, Michigan

Dear Mr. Roughton:

The U.S. Environmental Protection Agency is issuing the enclosed Notice and Finding of Violation (NOV/FOV) to RJ Torching, Inc., d/b/a RJ Industrial, LLC (you), under Section 113(a)(1) and (a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(1) and (a)(3). We find that you are violating both the Michigan State Implementation Plan and Administrative Consent Order EPA-5-15-113(a)-MI-02 at your Flint and Battle Creek, Michigan facilities.

Section 113 of the Clean Air Act gives us several enforcement options. These options include issuing an administrative compliance order, issuing an administrative penalty order and bringing a judicial civil or criminal action.

We are offering you an opportunity to confer with us about the violations alleged in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the NOV/FOV prior to the conference date.

Please plan for your facilities' technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Manojkumar Patel. You may call him at (312) 353-3565 or patel.manojkumar@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Edward Nam", is written over a horizontal line.

Edward Nam
Director
Air and Radiation Division

Enclosure

cc: Mary Douglas, MDEQ
mdouglasm@michigan.gov

Tom Hess, MDEQ
thess@michigan.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

RJ Torching, Inc.
d/b/a RJ Industrial, LLC
Flint, Michigan
Battle Creek, Michigan

Proceedings Pursuant to
Section 113(a) of the
Clean Air Act, 42 U.S.C.
§ 7413(a)(1) and (a)(3)

)
)
) **NOTICE AND FINDING OF**
) **VIOLATION**
) **EPA-5-18-MI-01**

NOTICE AND FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Notice and Finding of Violation (NOV/FOV) under Sections 113(a)(1) and (a)(3) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1) and (a)(3). EPA finds that RJ Torching, Inc., d/b/a RJ Industrial, LLC (RJ Torching), is violating the Michigan State Implementation Plan (SIP), and Administrative Consent Order EPA-5-15-113(a)-MI-2 (Order) at its Flint and Battle Creek, Michigan facilities, as follows:

Statutory and Regulatory Background

1. Each state must submit to the Administrator of EPA a plan for attaining and maintaining the National Ambient Air Quality Standards under Section 110 of the CAA, 42 U.S.C. § 7410.
2. On June 11, 1992, EPA approved R336.1301 as part of the federally enforceable Michigan SIP. 57 Fed. Reg. 24752 (June 11, 1992). On June 1, 2006, EPA approved a revision to R336.1301. 71 Fed. Reg. 31093 (June 1, 2006). R336.1301 first became federally enforceable on July 13, 1992, and the SIP revision became federally enforceable on July 3, 2006.
3. R336.1301(1)(a) requires, in relevant part, that a person shall not cause or permit to be discharged into the outer air from a process or process equipment visible emissions (VE) of a density greater than six-minute average of 20 percent opacity, except for one six-minute average per hour of not more than 27 percent opacity.
4. On June 28, 2002, EPA approved R336.1310 as part of the federally enforceable Michigan SIP. 67 Fed. Reg. 43548 (June 28, 2002). R336.1310 became federally enforceable on August 27, 2002.

5. R336.1310(1) requires, in relevant part, that a person shall not cause or permit open burning of refuse, garbage, or any other waste materials.
6. On July 26, 1982, EPA approved definitions in R336.1115 as part of the federally enforceable Michigan SIP. 47 Fed. Reg. 32116 (July 26, 1982).
7. R336.1115(b) defines “Opacity” as the degree to which an emission reduces the transmission of light or obscure an observer’s view.
8. R336.1115(c) defines “Open burning” as a fire from which the products of combustion are emitted directly into the outer air without passing through a stack or chimney.
9. On June 11, 1992, EPA approved definitions in R336.1101 and R336.1116 as part of the federally enforceable Michigan SIP. 57 Fed. Reg. 24752.
10. R336.1101(c) defines “air contaminant” as a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.
11. Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and R336.1116(h) defines “person,” in part, as an individual or a corporation.
12. R336.1116(q) defines “process” as an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.
13. R336.1116(r) defines “process equipment” as all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points used in a process.

Factual Background

14. RJ Torching owns and operates scrap metal processing facilities at 989 North Raymond Avenue, Battle Creek, Michigan (the Battle Creek Facility) and G-5167 North Dort Highway, Flint, Michigan (the Flint Facility), where it conducts torch cutting of metal scrap.
15. RJ Torching is a “person,” as that term is defined pursuant to Section 302(e) of the CAA and R336.1116.
16. Torch cutting is a “process,” as that term is defined at R336.1116.
15. Emissions from torch cutting at the Flint and Battle Creek facilities are “air contaminants,” as that term is defined at R336.1101, and are subject to Michigan SIP R336.1301.

16. On March 25, 2011 and December 20, 2013, EPA issued Notices of Violations to RJ Torching, citing exceedances of R336.1301(1)(a) of the Michigan SIP from the torch-cutting operations at its Battle Creek and Flint Facilities.
16. On March 31, 2015, EPA issued RJ Torching an administrative consent order, pursuant to Section 113(a) of the CAA, to address continuing exceedances of R336.1301(1)(a) of the Michigan SIP from the torch-cutting operations at its Battle Creek and Flint Facilities (the March 2015 Order).
17. The March 2015 Order, at paragraph 21, requires that RJ Torching shall achieve, demonstrate, and maintain compliance with the Michigan SIP at its Battle Creek and Flint Facilities by March 31, 2015.
18. On December 18, 2015, EPA issued a Notice of Violation to RJ Torching, citing violations of both R336.1301(1)(a) of the Michigan SIP and violations of the March 2015 Order at the torch-cutting operations at its Battle Creek and Flint Facilities.
19. On September 27, 2017, EPA conducted VE observations at the Flint Facility, in accordance with EPA Alternative Method 082. See 77 Fed. Reg. 8865 (Feb. 25, 2012). EPA determined the average opacity to be 45.83%, using a six-minute average.
20. On September 28, 2017, EPA conducted VE observations at the Battle Creek Facility, in accordance with EPA Alternative Method 082. EPA determined the average opacity to be 58.57%, using a six-minute average.
21. On September 28, 2017, EPA observed that after ceasing torching operation, RJ Torching allowed cast iron and rubber material to smolder, causing smoke at its Battle Creek facility.

Violations

22. The VE observations described in paragraphs 19 and 20, above, exceed the limit and constitute violations of the Michigan SIP, R336.1301(1)(a).
23. The VE observations described in paragraphs 19 and 20, above, constitute violations of paragraphs 21 and 22 of the Order.
24. The open burning of cast iron and rubber material described in paragraph 21, above, constitutes a violation of R336.1310(1).
25. The open burning of cast iron and rubber material described in paragraph 21, above, constitutes violation of paragraph 21 of the Order.

Environmental Impact of Violations

26. Violations of opacity and open burning regulations increase public exposure to unhealthy particulate matter. Acute respiratory effects of the inhalation of particulate matter include narrowing of the airways and asthma attacks. Chronic respiratory effects include damage to lung tissue, increased pulmonary resistance, and fibrotic changes in lung tissue. Increased pulmonary resistance and fibrosis may lead to cardiovascular impairment.

Date

12/20/17


Edward Nam

Director

Air and Radiation Division

CERTIFICATE OF MAILING

I certify that I sent a Notice and Finding of Violation, No. EPA-5-18-MI-01, by Certified Mail, Return Receipt Requested, to:


Jason Roughton, President
RJ Torching, Inc.
5061 Energy Drive
Flint, Michigan 48505

I also certify that I sent copies of the Notice and Finding of Violation by electronic mail to:

Mary Douglas, District Supervisor
Michigan Department of Environmental Quality
Kalamazoo District
DOUGLASM@michigan.gov

Tom Hess, Chief
Enforcement Unit
Air Quality Division
Michigan Department of Environmental Quality
HESST@michigan.gov

On the 21st day of December, 2017.



Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7059 1680 0000 7660 6820